

(b) to repackage and dispense *amphetamine sulfate tablets* in unlabeled containers, such as paper bags, thereby resulting in the drug being misbranded within the meaning of 502(b), 502(e) (1), and 502(f) (1);

(c) to purchase at prices varying from \$1.10 to \$1.50 per 1,000 tablets, through wholesale channels, large quantities of *amphetamine sulfate tablets* which had been manufactured outside of California;

(d) to sell *amphetamine sulfate tablets* in large quantities to customers without a physician's prescription, at varying prices such as \$9.00 for 300 tablets, \$15 for 500 tablets, \$25 for 1,000 tablets, and \$50 for 2,000 tablets; and

(e) to deliver the *amphetamine sulfate tablets* to the customer in unlabeled paper bags and, on request of the customer, to furnish the customer with empty unlabeled paper bags or envelopes for the customer's use in further distribution of the tablets.

It was alleged further, in pursuance of the conspiracy and to effect the objects thereof, that the defendants and their co-conspirators, between 1-29-58 and 2-11-58, had several conversations with Jerry L. Howard and sold *amphetamine sulfate tablets* to Jerry L. Howard on 4 different occasions without a prescription.

The information alleged also (counts 2 to 11 inclusive) that, between 1-30-58 and 2-6-58, *amphetamine sulfate tablets* while held for sale after shipment in interstate commerce were dispensed 5 times without a prescription contrary to Section 503(b) (1); and that such tablets were also repackaged and dispensed in unlabeled paper bags resulting in the tablets being misbranded as follows:

502(b)—the drug failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of its contents in terms of numerical count;

502(e) (1)—the drug did not have a label which bore the common or usual name of the drug; and

502(f) (1)—the drug did not have labeling which bore adequate directions for use.

PLEA: Not guilty by the corporation and Resnik to all counts and by Fisher to counts 1, 8, and 9.

DISPOSITION: The case came on for trial before the court and jury on 8-27-59.

During the trial the court granted a motion for judgment of acquittal on count 1. On 9-8-59, the jury returned a verdict of guilty on counts 2 to 11, inclusive. Thereafter, the court, on 10-13-59, imposed the following sentences: Corporation—\$2,500 fine; Resnik—\$2,500 fine and probation for 2 years; Fisher—\$350 fine and probation for 2 years.

5946. (F.D.C. No. 41162. S. Nos. 77-579 M, 77-582/5 M.)

INFORMATION FILED: 4-4-58, N. Dist. Ga., against Jim T. Harrison, Acworth, Ga.

CHARGE: Between 9-18-57 and 11-1-57, *amphetamine sulfate tablets* were dispensed 5 times without a prescription.

PLEA: Nolo contendere.

DISPOSITION: 7-14-58. Probation for 2 years.

5947. (F.D.C. No. 42036. S. Nos. 13-141/4 P.)

INFORMATION FILED: 11-25-58, N. Dist. Ill., against Liberty Drug Co., a partnership, Chicago, Ill., Nathan Roskin (partner), and Harmon L. Ginsberg (pharmacist).

**ALLEGED VIOLATION:** Between 3-12-58 and 4-14-58, tablets which had been fabricated in the State of Illinois from amphetamine sulfate powder that had been shipped in interstate commerce, were dispensed 4 times without a prescription.

**DISPOSITION:** On 12-18-58, the partnership and defendant Roskin entered a plea of not guilty to all counts and defendant Ginsberg entered a plea of not guilty to 3 counts. Thereafter, defendants filed a motion to dismiss and a motion for a bill of particulars. On 4-3-59, the court filed the following memorandum denying defendants' motion to dismiss:

SULLIVAN, *District Judge*: "This is an indictment under Title 21, U.S.C. § 353, which proscribes the dispensing of a drug without the prescription of a physician, when—

because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug \* \* \*

"Defendants have filed a motion to dismiss on several grounds, the most serious of which is that the quoted phrase is in violation of the due process clause in that it is 'vague, indefinite, uncertain and unintelligible to such an extent that the persons sought to be governed by them cannot determine what conduct on their part constitutes a criminal offense.'

"This contention must be overruled. '\* \* \* the provisions of this Act are sufficiently definite to support a criminal charge for the violation of the Act.' (*United States vs. 2600 State Drugs, Inc.*, 235 F. (2d) 913, (7th Cir., 1956), and cases there cited.

"The motion to dismiss will be denied."

On the same day the court granted the motion for bill of particulars in part.

Thereafter, on 7-22-59, defendants changed this plea of not guilty to nolo contendere, and the partnership was fined \$200 and costs; defendant Roskin was fined \$200; and Ginsberg was fined \$150.

5948. (F.D.C. No. 42439. S. Nos. 15-598/9 P, 15-605 P.)

**INFORMATION FILED:** 3-10-59, S. Dist. Ohio, against Vernon T. Osborne and Edward P. Cogan, Aberdeen, Ohio.

**CHARGE:** Between 6-24-58 and 7-11-58, *amphetamine sulfate tablets* were dispensed 3 times without a prescription.

**PLEA:** Guilty by Osborne to all counts and by Cogan to counts 1 and 2.

**DISPOSITION:** 4-3-59. Each defendant sentenced to 1 year in jail.

5949. (F.D.C. No. 42424. S. Nos. 5-191/2 P.)

**INFORMATION FILED:** 1-30-59, E. Dist. N.C., against Legrand Lindsay, Hampstead, N.C.

**CHARGE:** On 10-27-58, *amphetamine sulfate tablets* were dispensed twice without a prescription.

**PLEA:** Guilty.

**DISPOSITION:** 6-18-59. \$100 fine.

5950. (F.D.C. No. 42415. S. Nos. 15-036/7 P, 15-041/3 P.)

**INFORMATION FILED:** 1-24-59, W. Dist. Ky., against Magdalene Kingery and Hazel Walker, Horse Cave, Ky.